



తెలంగాణ రాజ పత్రము
THE TELANGANA GAZETTE
PART-V EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 37]

HYDERABAD, SATURDAY, JULY 22, 2017.

**STATUTORY NOTIFICATIONS OF THE ELECTION COMMISSION OF
INDIA AND OTHER ELECTION NOTIFICATIONS**

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NOTIFICATIONS BY GOVERNMENT

OFFICE OF THE CHIEF ELECTORAL OFFICER, TELANGANA

E.P. No. 01 OF 2016 - TRANSMISSION OF ECI's NOTIFICATION ALONG WITH THE ORDERS OF THE
HIGH COURT OF ANDHRA PRADESH & TELANGANA.

*[Memo. No. 797/Elecs.D/A1/2016-1, Office of the Chief Electoral Officer, Telangana,
Dated : 18th July 2017.]*

The Following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-
110001, dated : 28th June, 2017, 7th Ashadha, 1939 (Saka) is republished:-

NOTIFICATION

No. 82/ECI/TERR/TEL-HP(1/2016)/2017:- In pursuance of Section 106 (a) of the Representation of the
people Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Andhra
Pradesh and Telangana dated 19-09-2016 in Election Petition No. 1 of 2016.

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA
AND THE STATE OF ANDHRA PRADESH

MONDAY, THE NINETEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SIXTEEN

PRESENT

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

ELECTION APPLICATION No. 623 of 2016

IN

ELECTION PETITION No. 1 OF 2016

Between:

Mr. Dayakar Pasunoori, S/o. Prakasham,
aged about 48 years,
R/o. H.No. 3-129, Bollikunta Village & Post,
Sangem Mandal, Warangal District.

AND

... Petitioner/1st Respondent

1. Survey Sathyanarayana, S/o. Late Laxmaiah, aged about 61 years, Occ: Agriculture, R/o. Plot No. 43, Road No. 4, Thrimoorthy Colony, Mahendra Hills, East Marredipally, Secunderabad - 500 026.

... Respondent/Petitioner

2. Mr. Devaiah Pagidipati, S/o. Not Known to the Petitioner, Aged Major, R/o. H.No. 1-118/A/B/409, Plot No.409, BETA, Jayabheri Silicon County, Madapur, Hyderabad - 500 082.
3. Mr. Nalla Surya Prakash, S/o. Not Known to the Petitioner, Aged Major, R/o. H.No. 42-748/V/25, Moulali, Malkajigiri Mandal, Ranga Reddy District.
4. Mr. Kanakam Devadas, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 9-220, Mulugu Village and Mandal, Warangal District.
5. Mr. Jajula Bhaskar, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 1-6-48, Old Alwal, Bollaram Post, Secunderabad - 500 010.
6. Mr. Jeedi Sadanandam, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 1-148/1, Kanagarthi Village, Jammikunta Mandal, Karimnagar District.
7. Mr. Pasula Rammurthy, S/o. Not Known to the Petitioner, Aged Major, R/o. H.No.1-128/A, Narlapur Village, S.S. Thadvai Mandal, Warangal, District.
8. Mr. Palvai Venu, S/o Not known to the Petitioner, Aged Major, R/o. H.No.4.12.10/2, High Court Colony, Road No.4, Vanasthalipuram, Hayathnagar, Ranga Reddy District.

9. Mr. Bandi Kranthi Kumar, S/o. Not known to the Petitioner, Aged Major, R/o. Baironipalli, Siddapur Post, Hasanparthy Mandal, Warangal District.
10. Velthuru Mallaiah, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 21-2-195/9/1, Larthu Nagar, F.C.I., Road, Shanthi Nagar, Ramagundam, Karimnagar.
11. Mr. Gabbeta Babu, S/o. Not Known to the Petitioner, Aged Major, R/o. H.No.3-88 Mylaram Village, Rayaparthy Mandal, Warangal District.
12. Prof. Gali Vinod Kumar, S/o Not known to the Petitioner, Aged Major, R/o. H.No.12-13-132/1, Flat No. 202, Kibriya Residency, Street No. 3, Tarnaka, Secunderabad - 500 017.
13. Mr. Guggilla Sagar, S/o. Not known to the Petitioner, Aged Major, R/o. H.No.5-41/2, Ambedkar Colony, Mulugu Village and Mandal, Warangal District.
14. Mr. Gangaram Saibaba, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 11-9-115/2/2, Plot No. B4, Road No. 2, Laxminagar Colony, Kothapet, Saroornagar Mandal, Ranga Reddy District.
15. Mr. Jannu Mahendar, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 14-6-296, Nizampura, Mandi Bazar, Warangal, Warangal District.
16. Mr. Pendela Devaraju, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 2-57, Bagirthipeta Village, Regonda Mandal, Warangal District.
17. Mr. Barla Srinivas, S/o. Not known to the Petitioner, Aged Major, R/o. H.No.3-88, Madikonda Village, Hanamakonda Mandal, Warangal District.
18. Smt. Banda Susheela, W/o. Not known to the Petitioner, Aged Major, R/o. H.No.1-17, Burahanpally Village, Rayaparthy Mandal, Warangal District - 506 314.
19. Mr. Yeachu Sunil, S/o. Not known to the Petitioner, Aged Major, R/o. H.No.8-3-51, Nizampet, Khammam District.
20. Mr. Ripeeka Prem Kumar, S/o. Not known to the Petitioner, Aged Major, R/o. 8-3-51, Nizampet Khammam District.
21. Mr. Vemula Ramesh, S/o Not known to the Petitioner, Aged Major, R/o.3-6, Duddenapally Village, Saidapur Mandal, Karimnagar District.
22. Mr. Sandra Johnson, S/o. Not known to the Petitioner, Aged Major, R/o. H.No. 16-8-200, Abbanikunta, Warangal, Warangal, District - 506 013.
23. The Election Commission of India, rep. by its Secretary, Nirvachan Sadan, Ashoka Road, New Delhi - 110001.
24. The Returning Officer-cum-District Collector, Warangal District, State of Telangana.
25. The Chief Electoral Officer, Andhra Pradesh and Telangana, South, H.Block, Secretariat, Hyderabad - 500 022.
26. Union of India,
Represented by its Secretary,
Ministry of Petroleum and Natural Gas,
New Delhi.

... Respondents/Respondents 2 to 26
(Respondents 2 to 26 are not necessary)

Election Application under Order VII Rule II of C.P.C. praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to reject the Election Petition in E.P.No. 1 of 2016 under Order VII Rule II of Civil Procedure Code, 1908.

The Application coming on for hearing upon persuing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri P. Kesava Rao, Advocate for the Petitioner and of Sri T. Lakshmi Narayana, Advocate for the Respondent.

The Court made the following Order:

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL**APPLICATION No. 623 of 2016****IN****ELECTION PETITION No. 1 OF 2016****ORDER:**

The present application is filed by the petitioner/1st respondent Dayakar Pasunoori under Order VII Rule-11 of Code of Civil Procedure to reject the Election Petition No.1 of 2016 filed by the respondent/petitioner-Survey Sathyanarayana.

2. For the sake of convenience, the parties are referred to as arrayed in the main Election Petition No. 1 of 2016.

3. The main Election Petition No. 1 of 2016 is filed seeking to declare the election of the 1st respondent Dayakar pasunoori as Member of Parliament for 15-Warangal (SC) Parliamentary Consituency as void and in turn to declare the petitioner-Survey Sathyanarayana as duly elected person.

4. The present application is filed on the ground that the petitioner has failed to comply with the provisions of Section 123 of the Representation of Peoples Act, 1951 (for short "the Act"). Under Section 83(1)(a) of the Act, it is obligatory on the part of the petitioner to file an election petition with all material facts. The 1st respondent did not mention in Form No. 26 about the contract entered into by himself and his wife with Bharath Petroleum Corporation Limited. The petitioner failed to give material particulars to satisfy the ingredients of Section 9-A and 123 of the Act with supporting evidence. As per Section 83(1)(c) of the Act, every election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure and it is mandatory to sign in the presence of Notary, but the petitioner has not done so. It is settled law that election petitions can be rejected at the threshold for non-compliance of the mandatory provisions as contemplated under the Act. There is no cause of action to file the election petition.

5. The basic ingredient of Section 9-A of the Act is that there should be a subsisting contract entered into with the appropriate Government for the supply of goods to, or for execution of any works undertaken by that Government. The appropriate Government is the State Government or the Central Government, but not the local or other authorities under the control of the State Government/Central Government. Since the Bharath Petroleum Corporation Limited cannot be equated with the appropriate Government as per Section 9-A of the Act, the ground on which the election petition is filed is untenable and the election petition is liable to be dismissed. The petitioner cannot club the Election Press Note and the declaration of result in Form No. 21-D together, since both are independent of each other, Form No.21-D is not filed along with the verification. Each annexure does not have verification separately. The documents referred to in Annexure-VIII are independent newspaper clippings and they would have been filed independently with separate verification. The petitioner failed to file separate affidavits in compliance with the provisions as well as the Rules framed with regard to proving the corrupt practice. The election petition suffers from lack of material facts and hence the same is liable to be rejected.

6. The petitioner filed counter denying the contentions of the 1st respondents. It is submitted that the present application filed by the 1st respondent under Order 7 Rule-11 CPC do not fall within the ambit of Order 7 Rule 11(a), (b), (c) & (d) of CPC. Whether the election petition discloses a cause of action or not, the Court has to look into the allegations in the election petition. There is no contention raised by the 1st respondents that the relief claimed is undervalued and the petitioner is required to correct the valuation within a time fixed by the court. In the absence of any such contention or pleading, within the ambit of Order 7 Rule-11(b) CPC, the present application is liable to be dismissed.

7. The non-filing of verification in respect of Election Press Note and the declaration of result in Form-21D are curable defects. The present application is not filed by the counsel for the 1st respondents Mr.M.Ajay Kumar, who was on record as on 07-07-2016, but it was filed by Mr.P.Keshava Rao and D.Narsimulu, who are not the counsel on record for the respondent, and therefore, the application is liable to be dismissed.

8. The Election Petition was filed on 04-01-2016, registered on 18-01-2016, summons for settlement of issues was served on the respondent on 08-04-2016 and the respondent entered appearance through his counsel Mr.M.Ajay Kumar on 21-04-2016. The 30 days time prescribed under Order 8 Rule-1 CPC for filing written statement/counter to the Election Petition expired on 08-05-2016. The 90 days time under proviso to Order 8 Rule-1 CPC also expired by 07-07-2016. The time extended by this Court for the respondent to file his written statement/counter expired on 08-07-2016. The respondent failed to file written statement/counter within 90 days. The filing of piecemeal applications, raising objections, be it preliminary or otherwise, including the present application, would lead to undesirable result and the application is liable to be dismissed.

9. The averments of the present application are very vague and do not specify which part of the election petition do not comply with the provisions of the Act. The averments in the election petition alone have to be looked into and should presume to be correct for the time being so as to find out whether such averments disclose a cause of action or not, but not any other material. Material fact means a subject matter of the statement related to a fact or circumstance which would be important, significant or essential for making a reasonable decision and hence the averments made in the election petition contain full material facts making out *prima facie case*. The election petition and other affidavits are sworn, affirmed and signed in the presence of the notary. The petitioner has complied with the procedure as contemplated under the mandatory provisions of the Act. The petitioner denied all the contentions as raised by the 1st respondent in the present application. It is stated that the election petition contain full material facts and there is cause of action to file the election petition and thus it is maintainable, and therefore, the present application is liable to be dismissed.

10. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent

11. The points that arise for consideration are as to :-

- 1) Whether the Election Petition, in the instant case, contains material facts so as to proceed with the trial?;
Or
- 2) Whether the petitioner/R.1 has suffered disqualification falling within the ambit of Section 9-A of the Act? ; or
- 3) Whether the averments made in the Election Petitioner do not disclose any cause of action so as to reject the same at the threshold under the provisions of Order VII Rule 11 of C.P.C.?

Points:

12. The petitioner/R.1 was declared elected as a Member of Parliament for the Warangal (SC) parliamentary constituency in the election held on 21-11-2015. the first respondent herein was the unsuccessful candidate. He filed the Election Petition alleging that the petitioner/R.1 has suffered the disqualification in view of his existing contract along with his wife with Bharat Petroleum Corporation Limited, which is a disqualification as per Section 9-A of the Act and that the petitioner/R.1 has indulged in corrupt practices as envisaged under Section 123 of the Act. The first respondent in the Election Petition has filed the application in hand for rejecting the Election Petition at the threshold under the provisions of Order VII Rule 11 C.P.C., on the ground that there is no cause of action for the Election Petitioner and that the material facts as required under Section 83 of the Act have not been set forth. Even though it was not specifically mentioned in the application that the Election Petition is sought to be rejected for want of cause of action as contemplated under sub-clause (a) of Rule 11 of Order VII C.P.C., but the contents thereof make it clear that the petitioner is seeking the rejection of the Election Petition on that ground.

13. It is well-settled that for deciding an application under Order VII Rule 11 C.P.C., the averments in the petition are relevant and suffice it if material facts are averred in a petition though it may not incumbent for the petitioner to set out the material particulars. In this connection, it may be appropriate to refer to the authority of the Supreme Court reported in **MAHADEORAO SUKAJI SHIVANKAR V. RAMARATAN BAPU AND ORS¹**, wherein it is observed at para 6 as under:-

“Now, it is no doubt true that all material facts have to be set out in an election petition If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered

¹ (2004) 7 SCC 181

by Clause (a) of Rule 11 of Order VII of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression “material facts” has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words material facts are facts upon which the plaintiff’s cause of action or defendant’s defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary fact which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.”

14. Other decision on this aspect is the one reported in **MAHENDRA PAL V. RAM DASS MALANGER & ORS.**². The Hon’ble Supreme Court at paragraphs-7 & 24 held as under:

“7. Section 83(1)(a) of the Act mandates that in order to constitute a cause of action, all material facts, that is, the basic and preliminary facts which the petitioner is bound under the law to substantiate in order to succeed, have to be pleaded in an election petition. Whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of the charge leveled and the facts and circumstances of each case. The distinction between ‘material facts’ and ‘particulars’ has been explained by this Court in a large number of cases and we need not refer to all those decided cases. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other hand “particulars” are details of the case set up by the party and are such pleas, which are necessary to amplify, refine or explain material facts. The function of particulars is, thus, to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. The distinction between ‘material facts’ and ‘material particulars’ is indeed important because different consequences follow from a deficiency of such facts or particulars in the pleadings. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, CPC. In the case of a petition suffering from deficiency of material particulars the Court has the discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with permission of the Court, no material fact unless already pleaded, can be permitted to be introduced, after the expiry of the period of limitation.

24. Our perusal of various paragraphs of the election petition and particularly of the averments contained in paragraphs 10 to 13, 16 and 20, go to show that sufficient material facts, to provide a cause of action, for trial of the election petition have been provided in the election petition. In various sub-paras of paragraph 11 of the election petition, particulars of irregularities have also been spelt out. The non-mention of serial numbers of the improperly counted ballot papers, keeping in view the averments made in paragraph 16 of the petition, could not be a ground to non-suit the election petitioner at the threshold, without trial more particularly because of the discrepancy between Ex.P.2 and Ex P.3. Pleadings have to be read as a whole to ascertain their true import. It is the substance and not merely the form, which is required to be looked into for construing the pleadings. The intention of the party needs to be gathered from the tenor and terms of his pleadings taken as a whole. These well settled principles appear to have been lost sight of the learned designated Judge. Construed reasonably, the averments in the election petition, in our opinion, do make out a case for the petition proceeding to trial. Whether or not a case is eventually made out to justify recount/inspection would depend upon the evidence led by the parties in support of their pleadings at the trial.”

15. Adverting to the facts of the case in hand, as already stated, the main stay of the petitioner’s case is that the contents of the Election Petition are vague and they do not contain the material particulars as required and that the first respondent/Election Petitioner has no cause of action.

16. As noticed above, the election of the petitioner is challenged on the ground that he suffered disqualification under Section 9-A of the Act and also indulged in corrupt practices as contemplated under Section 123 of the Act, During the course of hearing, learned senior Counsel appearing for the first respondent/Election Petitioner fairly submits that the Election Petition does not satisfy the requirements of the Act, inasmuch as, it does not contain the details as are required for questioning the election of the successful candidate on the grounds of corrupt practices. It is conceded that the petition does not contain material facts in so far as the ground is concerned. Therefore, this aspect need not detain us long.

17. The contention of the learned Counsel appearing for the petitioner/successful candidate is that even if the allegation in the Election Petition is taken on its face value, it does not attract the provisions of Section 9-A of the Act since the successful candidate along with his wife are undoubtedly carrying on distributorship of a Government owned oil company dealing in the liquefied petroleum gas.

18. The fact not in controversy is that the petitioner/R. 1. along with his wife are having subsisting distributorship with the Bharat Petroleum Corporation Ltd., with the dealer code No. 142270 of village Wardhannapet, Warangal District. Whether this act of the Successful candidate having a distributorship in the Government owned Oil Company constitutes disqualification so as to hold that the successful candidate is not competent to contest in an election to the parliament, is in question.

19. Section 9-A of the Act reads as under :-

“Disqualification for Government contracts, etc.,:- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.

Explanation:- For the purposes of this Section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.”

20. As per Section 2 (e) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 (for short ‘the Order’) a *distributor* has been defined as person appointed by a Government oil company and engaged in the business of purchase, sale or storage for sale of liquefied petroleum gas in cylinders to consumers on the basis of an agreement with a Government oil company.

21. What is the Government Oil Company has been defined in sub-clause (g) of Section 2 of the above Order and it includes Bharat Petroleum Corporation Limited, which is relevant in the instant case.

22. Sub-clause (I) of Section 2 of the above Order defines the *public distribution system* as a system of distribution, marketing or selling of liquefied petroleum gas by a Government oil company at the Government controlled or declared prices through a distribution system approved by the Central or State Government. Section 9 of the above Order puts restrictions and controls the business activities of a distributor in the following words:-

“Procurement, storage and sale of liquefied petroleum gas by a distributor:-(a) No distributor having stock of liquefied petroleum gas at the business premises, including storage point, shall, unless otherwise directed by a Government oil company or a parallel marketer, refuse to sell L.P.G, on any working day during working hours, to the consumer registered with that distributor.

(b) No distributor shall keep his business premises including the storage point closed during working hours on any working day without the prior written permission of the Government oil company or the parallel marketer.

Explanation:- For the purposes of sub-clause (a) and (b) the expression “working hours” means the working hours fixed by the concerned Government oil company or the parallel marketer in accordance with the provisions of the shops and Establishments Act and the rules made thereunder, as in force in the respective States or the Union territories, as the case may be.

(c) Every distributor shall take steps to ensure that stocks of liquefied petroleum gas are available at the business premises, including the storage point, at all times.

(d) No distributor shall sell liquefied petroleum gas at a higher price than that fixed by the Government oil company or the parallel marketer.

(e) No distributor shall, without prior written permission of the concerned Government oil company, refuse to make home delivery at the address of the consumer, as registered with the distributor.

Provided that the State Government may, fix additional charges for home delivery of L.P.G cylinders to the consumers, as it may deem necessary in view of the geographical terrain and/or the distance in the area of distribution.

(f) Every distributor shall display the working hours prominently at the place of business including the place of storage on a conspicuous place.”

23. Section 13 of the above Order confers power on any Officer of the Central or State Government in the following words:-

“Power of entry, search and seizure:- (1) Any Officer of the Central or the State Government not below the rank of Inspector duly authorised by a general or a special order, by the Central Government or the State Government, as the case may be or any Officer of a Government oil company not below the rank of Sales Officer, authorised by the Central Government, may, with a view to securing due compliance of this Order or any other order made thereunder:-

- (a) stop and search any vessel or vehicle used or capable of being used for the transport or storage of any petroleum product,
- (b) enter and search any place,
- (c) seize stocks of liquefied petroleum gas along with container and/or equipments, such as cylinders, gas cylinder valves, pressure regulators and seals in respect of which he has reason to believe that a contravention of this Order has been, or is being or is about to be made.

(2) The sales Officer of a Government Oil Company shall be authorised to secure compliance of this Order by the distributors appointed under the Public distribution system and or by the consumer registered by them.”

24. Learned Counsel appearing for the Election Petitioner submits that if the provisions of the above Order are read along with Section 9-A of the Act it is clear that the petitioner/successful candidate is disqualified from contesting an election since admittedly there subsisted a contract entered into by him in the course of his trade or business with the Government for the supply of goods.

25. During the elaborate arguments, both the learned Counsel appearing for the Election Petitioner as well the Successful Candidate submitted various authorities in support of their respective contentions, which are briefly referred to hereunder:-

26. In **RAVINDER SINGH V. JANMEJA SINGH & ORS.**³ the Hon’ble Supreme Court at paragraph-11 held as under:

“11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso is Section 83(1) of the Act, the election petition levelling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any finishing and roving enquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.”

27. In **KARTAR SINGH BHADANA V. HARI SINGH NALWA**⁴ the Hon’ble Supreme Court at paragraph-8, 12 & 13 held as under:

“8. In so far as is relevant to a case where it is alleged that a candidate holds a contract for the execution of works undertaken by an appropriate Government, Section 9A requires (a) that there should be a contract entered into by the candidate; (b) that it should be entered into by

³ AIR 2000 SC 3026

⁴(2001) 4 SCC 661

him in the course of his trade or business, (c) that it should be entered into with the appropriate Government; (d) that it should subsist; (e) that it should relate to works undertaken by that Government and (f) that it should be for the execution of such works. The provisions of Section 9A disqualify a citizen from contesting an election; a citizen may, therefore be disqualified only if the facts of his case squarely fall within the conditions prescribed by Section 9A.

12. Reference was made to the mining leases by learned counsel for the first respondent. Thereunder, the appropriate Government has granted and demised to a partnership firm of which the appellant is a partner the right to win minerals from the areas therein mentioned. Clause 23 thereof, which was relied upon, says that if the lessee does not carry out its obligations under the covenants in the lease the lessor may cause the same to be carried out and performed and the lessee shall pay the lessor all expenses in this behalf. There is nothing in this clause in the leases which can support the submission made on behalf of the first respondents that the appellant had entered into a contract for the execution of any works undertaken by the Government.

13. As we see it, it is only when the appropriate Government has undertaken works, such as the laying of a road, the erection of a building or the construction of a dam, and has entered into a contract for the execution of such works that the contractor is disqualified under Section 9A. Section 9A does not operate to disqualify the lessee of a mining lease such as the appellant.

28. In **DEWAN JOYNAL ABEDIN V. ABDUL WAZED**⁵ the Hon'ble Supreme Court at paragraphs-16, 17, 18, 19 & 20 held as under:

"16. An analysis of Section 9-A of the Act shows that only in two cases a person would be disqualified if he has entered into a contract with the appropriate Government in the course of his trade or business which is subsisting on the date of scrutiny of nomination. They are (i) when the contract is one for supply of goods to the appropriate Government and (ii) where the contract is for the execution of any works undertaken by that Government. If a contract belonging to either of the two categories is subsisting on the date of the nomination, the person will be disqualified for being chosen as a member. In the present case the contract is not one for supply of goods to the Government. It does not, therefore, fall under the first class of contracts which create the disqualification. The question for determination is whether the contract to collect toll at a Government ferry entered into in accordance with the Ferries Act amounts to a contract for the execution of any works undertaken by the Government. At this stage we should remember that the words 'or the performance of any services' were omitted from Section 7(d) by the amendment made in the year 1958. In *N. Satyanathan v. K. Subramanyan and Ors.*: [1955] 2SCR83 this Court had occasion to construe Section 7(d) of the Act before its amendment in 1958. In that case the appellant was a contractor who had entered into an agreement with the Central Government whereby he had contracted with the Governor-General for the provision of a Motor Vehicle Service for the conveyance of postal articles and mail bags. Under the contract the Governor-General had agreed to pay to the contractor Rs.200/- per month during the subsistence of the agreement as his remuneration for service to be rendered by him. The appellant therein was held to be disqualified under Section 7(d) of the Act, as it stood then, as he had undertaken to carry out a service which the Government had undertaken to do. The Court said that "it cannot be gainsaid that the Government in the Postal Department is rendering a very useful service and that the appellant has by his contract with the Government undertaken to render that kind of service on a specified route. The present case is a straightforward illustration of the kind of contract contemplated by Section 7(d) of the Act." The Court took the above view in view of the presence of words 'the performance of any service' under Section 7(d) of the Act, as it stood then. Those words were omitted from Section 7(d) on its amendment in the year 1958 and Section 9-A of the Act as it stands today also does not contain those words. In *Ram Padarath Mahto v. Mishri Singh and Anr.*: [1961] 2SCR470 a similar question arose for consideration. The appellant in that appeal was a member of joint Hindu family which carried on the business of Government stockists of grain under a contract with

⁵1988 (supp) SCC 580

the Government of Bihar. His nomination for election to the Bihar Legislative Assembly was rejected on the ground that he was disqualified under Section 7(d) of the Act, as he had an interest in a contract for the performance of services undertaken by the Bihar Government. The appellant contended that the service undertaken by the Government was the sale of food grains under the Grain Supply Scheme and the contract was not for the sale of such food grains and did not attract the provisions of Section 7(d) of the Act. This court held that the contract was not one for the purpose of any service undertaken by the Government and the appellant therein was not disqualified under Section 7(d) of the Act. The Court held that a contract of bailment which imposed on the bailee the obligation to stock and store the food-grains in his godowns was not a contract for the purpose of the service of sale of grain which the Government had undertaken. The Government had undertaken the work of supplying grain but the contract was not one for the supply of grain. The Court distinguished the decision in *N. Satyanathan v. K. Subramanyam (supra)* while reaching the conclusion that the appellant was not disqualified for being chosen as a member of the Bihar Legislature. So even at a time prior to the amendment of Section 7(d) of the Act in the year 1958 it was possible to take the view that certain types of contracts entered into with the appropriate Government, even though they were subsisting on the date of scrutiny of nomination did not disqualify a person from being chosen as a member of the State Legislature. It is pertinent to refer to the observation made by *Gajendragadkar J. in Ram Padarath Mahto's case (supra)* which runs as under.

It may sound technical, but in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points of distinction on the ground that they are technical. The narrow question is: if the State Government undertook the work of supplying the grain, is the contract one for the supply of grain. In our opinion, the answer to this question must be in the negative, that is why we think the High Court did not correctly appreciate the effect of the contract when it held that the said contract brought the appellant's case within the mischief of Section 7(d).

17. Unless the contract in question is one which clearly falls under Section 9-A of the Act, it would not be proper to hold that the person who is a party to the contract is disqualified for being chosen as a member to the State Legislature. In *Lakshmikantha Rao v. D. Chinna Mallaiah and Ors.* : AIR 1979 AP 132 the question that arose for consideration was whether a person who was carrying on the business in arrack and toddy under the contract with the Government under the provisions of the Andhra Pradesh Excise Act, 1968 was disqualified for being chosen as a member of the Legislature. The facts of that case briefly stated were thus. There was an agreement between the highest bidder, i.e., the returned candidate and the Government in respect of the carrying on the business in arrack and toddy. A perusal of the relevant provisions, i.e., Section 15 and 17 of the Andhra Pradesh Excise Act and Rule 21 of the Rules framed under that Act as well as the agreements signed framed under that Act as well as the agreements signed by the returned candidate, showed that the highest bidder had to deposit the monthly rentals and purchase the arrack from the Government at the issue price and sell the same to the public. If there were any arrears in the monthly rentals the same could be recovered as arrears of land revenue. Similarly with regard to the toddy shop he had to tap the toddy from the trees allotted to him by the Government by paying the tree-tax and sell the toddy to the public. For the toddy shop also he had to pay monthly rentals and if he fell in arrears the same could be recovered as arrears of land revenue. There were other incidental conditions in the agreements. The Andhra Pradesh High Court held that since the contracts entered into by the successful candidate with the State Government to sell arrack and toddy did not come within the mischief of Section 9-A of the Act as they were neither for supply of goods to the Government nor for the execution of any works undertaken he did not suffer from any disqualification for being chosen as a member of the Legislative Assembly. We have gone through the above decision carefully. We are of the view that the High Court was right in the said case in holding that the returned candidate had not suffered from any disqualification by reason of the fact that he was an excise contractor.

18. In the present case the position of the 1st respondent is more or less similar to the position of the returned candidate in the decision of the Andhra Pradesh High Court. The 1st respondent had acquired in the public auction the right to collect the toll by paying the amount which he had offered to pay under the contract. He had not undertaken thereby any contract for execution of any works undertaken by the Government. The word 'works' in the expression in 'execution of any works' appearing in Section 9-A of the Act is used in the sense of 'projects. 'Schemes'. 'plants', such as building works, irrigation work defence works etc. The 1st respondent in this case had not undertaken to carry on any such work. According to the Shorter *Oxford* English Dictionary the expression 'work' means a structure or apparatus of some kind; an architectural or engineering structure, a building edifice. When it is used in plural, i.e., as 'works' it means 'architectural or engineering operations; a fortified building; a defensive structure. fortification; any of the several parts of such structure.' The word 'works' used in Entry 35 of List II of the Seventh Schedule of the Constitution of India which reads as "works, lands and buildings vested in or in the possession of the State" is used in the same sense. The running of boats across inland waterways is a topic which falls under Entry 32 of List III of the Seventh Schedule which reads thus; "Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways." It is, therefore, difficult to hold that when a person acquires the right to collect toll at a public ferry under Section 8 of the Ferries Act he is performing a contract of execution of works undertaken by the Government. It may have been perhaps different if the words 'in performance of any services' which were present in Section 7(d) of the Act, as it stood prior to its amendment in 1958 had been there in Section 9-A of the Act.

19. We do not find any substance in the argument urged on behalf of the appellant that because under Condition No. 10 of the form of lease prescribed under the Ferries Act the lessee is under an obligation during the period of lease to mark buoys or in any other suitable manner, all submerged obstruction or dangerous rocks in the rivers within half a mile of the landing ghats and shall be held responsible for any loss of damage caused to the mar boats striking against such submerged obstructions or dangerous rocks it should be held that the 1st respondent had undertaken to execute works undertaken by the Government. The above condition only requires the lessee to mark buoys or in any other suitable manner the places where there were any submerged obstruction or dangerous rocks within half a mile of the landing ghats. Having regard to the conditions of the lease and the provisions of the Act and the Rules made thereunder we are clearly of the view that the activity undertaken by the lessee under the agreement cannot be considered as an agreement for execution of works undertaken by the State Government.

20. We are, therefore, of the view that the contract which the 1st respondent had entered into with the State Government even though it was subsisting on the date of scrutiny of nominations would not have the effect of disqualifying him for being chosen as a member of the State Legislative Assembly since section 9-A of the Act is not at all attracted to such a case."

29. In **C.V.K.RAO V. DANTU BHASKARA RAO**⁶ the Hon'ble Supreme Court at paragraph-3 held as under :

"3. The disqualification which results from s. 7(d) is conditioned by a number of circumstances. First, there must be a subsisting contract (this is to say in actual existence) between the appropriate Government and the candidate. Then the contract must be in the course of the trade or business of the candidate and, finally, it must be inter alia for the supply of goods to such Government. The appropriate Government according to the definition of the expression is the Government of Andhra Pradesh....."

30. In **LAKSHMIKANTHA RAO V. CHINNA MALLAIAH**⁷ this Court at paragraphs-12, 17 & 18 held as under :

⁶ AIR 1965 SC 93

⁷ 1978(11) Andhra Law Times Reports-460

“12. There is no doubt that the object of the Parliament in enacting Section 9-A was to preserve the integrity and independence of the members of the Legislature and to keep the Legislature beyond any suspicion in the interests of public morality. But as observed by the Supreme Court in *Konappa v. Vishwanath*. [1969] 2SCR90 the right of a person to stand for an election is valuable right just as a right of a person to vote and that a sensible view of the section will have to be taken. In *Bhaskara Rao v. C.V.K. Rao*, : AIR1964AP77 a Division Bench of this court while considering the scope of the old Section 7(d) which is analogous to the present Section 9-A, observed thus (at P.82):

“Since Section 7(d) is a disabling provision and deprives citizens of India of the right to stand for election and serve the community, it should receive a very strict interpretation, Statutes which encroach on the rights of the subject, whether as regards person or property, are subject to a strict construction and it is a recognised rule that they should be interpreted if possible, so as to respect such rights and if there is any ambiguity as to the meaning of the section, inasmuch as it is a disabling section, the construction which is in favour of the freedom of the individual should be given effect to as stated by Maxwell.”

The learned Judges also considered the other contention viz., that the object of the Parliament in enacting the disabling section is to maintain the integrity of the members of the Legislature and that any interpretation contrary to such an intention cannot be made, and held thus (at p. 83):-

No exception could be taken to these rules as stated thus. But, at the same time, we cannot overlook the cardinal rule that Courts should not strain the language of a statute in order to cover cases which are plainly excluded from the natural meaning of the words.

In this context it is beneficial to refer to some passages from ‘Maxwell on interpretation of Statutes’. which read thus:-

The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar. The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without in the first instance, reference to cases.

The rule of construction is to intend Legislature to have meant what they have actually expressed.’ The object of all interpretation is to discover the intention of Parliament, ‘but the intention of Parliament must be deduced from the language used, ‘for it’ it is well accepted that the belief and assumptions of those who frame Act of Parliament cannot make the law.’

Bearing these principles in mind if we examine the plain language of Section 9-A we notice that the two important requirements, apart from other requirements, under the section are, the subsisting contract must be for the supply of goods to the Government, or for the execution of any works undertaken by the Government. The nature of the contract in the instant case prima facie is such that the 1st respondent was not under an obligation to supply any goods to the Government or the contract is for the execution of any works undertaken by the Government.

17. It can therefore, be seen that the contract entered into by the 1st respondent in the present case with the Govt. to sell arrack and teddy to the public after due payments of rentals to the Government does not amount to contract for the execution of any works undertaken” by the Government. The relevant Provisions of the A.P. Excise Act and the Rules referred to above only indicate that the Government has the monopoly to buy, sell or to import any intoxicant; and under Section 17 it can grant a lease in favour of any person for fixed period subject to certain conditions for the supply, manufacture or sale of intoxicants. In the instant case the lease granted in favour of the 1st respondent who was the highest bidder, was only for the sale

toddy and arrack in those two villages for one year. The scheme of the Excise Act of the Rules made thereunder do not in any way indicate that the Government has undertaken any works” within the meaning Section 9-A or the Representation of the People Act, and I see no reason to take a different view from the one taken by the Madhya Pradesh High Court in Satya Prakash’s case, : AIR 1963MP316, which has been followed by the Patna and the Allahabad High Courts as mentioned supra.

18. It may be that if Section 9-A had been in the same terms as that of Section 7(d) as it stood prior to the amendment the contracts of this nature under the A.P. Excise Act would have come within the sweep of the word “the performance of any services”. But those words are omitted by the amendment Act of 1958. It is already noticed that Same innocuous Contracts like carrying Postal mail bags, etc., came within the mischief of Sec. of 7(d) as it stood prior to the Amendment and the candidates holding such contracts were disqualified. But Section 9-A which is in pari materia with Section 7(d) after amendment does not cover all kinds of contracts which are in a way meant for ‘he performance of any services undertaken by the Government. It may not be possible to say that the persons who have excise contracts with the Government are of lesser consequence from the point of view of the integrity and independence of the Legislators when compared to the other persons who have some contracts either for supply of goods to the Government or for the execution of any works undertaken by the Government. The accusing finger in this context can as well be pointed against the persons doing Excise contracts. But after the omission of the words “the performance of any services” in the relevant provision of law it can no more be said that all contracts for the performance of any services undertaken by tin Government still come within the mischief of Section 9-A. The language of Section 9-A is clear and this Court cannot construe the section in a different manner by straining the same. The remedy to set right incongruity, it any, lies with the Legislature.

31. In **RANJEET SINGH V. HARMOHINDER SINGH PRADHAN**⁸

the Hon’ble Supreme Court at paragraphs 3 & 7 held as under :

“3. On its plain reading, Section 9-A of the Act requires (i) that there must be a subsisting contract which has been entered into by the person whose candidature is sought to be disqualified with the Government; (ii) that contract is for the supply of goods to the Government or (iii) that the contract is for the execution of any works undertaken by the Government.

7. Section 9-A is a statutory provision which imposes a disqualification on a citizen, It would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the Section and the intention of the legislature. Purposive interpretation is necessary. In Dewan Joynal’s case (supra), Section 9-A of the Act has been correctly interpreted in the following words:

An analysis of Section 9-A of the Act shows that only in two cases a person would be disqualified if he has entered into a contract with the appropriate Government in the course of his trade or business which is subsisting on the date of scrutiny of nomination. They are (i) when the contract is one for supply of goods to the appropriate Government and (ii) where the contract is for the execution of any works undertaken by that Government...

...The Andhra Pradesh High Court held that since the contracts entered into by the successful candidate with the State Government to sell a rack and toddy did not come within the mischief of Section 9-A of the Act as they were neither for supply of goods to the Government nor for the execution of any works undertaken he did not suffer from any disqualification for being chosen as a member of the Legislative Assembly we have gone through the above decision carefully. We are of the view that the High Court was right in the said case in holding that the returned candidate had not suffered from any disqualification by reason of the fact that he was an excise contractor”.

⁸ (1999) 4 SCC 517

32. In **UMESH CHALLIYILL V. K.P. RAJENDRAN**⁹ the Hon'ble Supreme Court at paragraphs-6, 12, 19 & 20 held as under:

“6. Section 83 of the Act of 1951 states what are the contents of the election petition. Section 83 reads as under:

83. Contents of Petition:- (1) An election petition-

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
 - (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
 - (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings : Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in, support of the allegation of such corrupt practice and the particulars thereof.
- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

As per Section 83 a concise statement of material facts should be given in the petition and if the allegations are of corrupt practice then the a full statement, as far as possible, all names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice has to be disclosed and it shall be signed by the petitioner and verified in the manner laid down in the CPC for verification of the pleadings. It further provided that where the allegations are of corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof in Form No. 25.

12. Both the defects which have been pointed out by learned Single Judge were too innocuous to have resulted in dismissal of the election petition on the basis of the preliminary objection. The Courts have to view it whether the objections go to the root of the matter or they are only cosmetic in nature. It is true that the election petition has to be seriously construed. But that apart the election petition should not be summarily dismissed on such small breaches of procedure, Section 83 itself says that the election petition should contain material facts. Section 86 says that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 of Section 82 or Section 117. But not of defect of the nature as pointed out by the respondent would entail dismissal of the election petition. These were the defects, even if the Court has construed them to be of serious nature, at least notice should have been issued to the party to rectify the same instead of resorting to dismissal of the election petition at the outset.

19. In **R.P. MOIDUTTY V. P.T. KUNJU MOHAMMAD AND Anr.**: AIR2000SC388 their Lordships have expressed that heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people should not be interfered lightly and it emphasized that under Section 83 of the Act ordinarily it would suffice if the election petition contains a concise statement of the material facts relied on by the petitioner but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice, the date and place of the commission of each such practice. An election petition is required to be signed and verified in the same manner as is laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. But this case has nothing to do with regard to the defective pleadings. This case only emphasized that the election petition should not be lightly dealt with. In this case also objection of improper verification was pressed into service

⁹ (2008) 11 SCC 740

but neither the verification in the election petition nor the affidavit was cured and on the contrary the same was pressed into service and pursued by the election petitioner by arguing the matter before the Court. The election petitioner persistently pursued the election petition without rectification, therefore, this Court dismissed the petition on that ground. It was therefore, observed as follows:

“The object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured. In the present case the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. Unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in the required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings. The affidavit filed by the petitioner in support of the election petition as required by Rule 94-A also does not satisfy the requirement of the proviso to Sub-Section (1) of Section 83 of the Act and Form 25 appended to the rules.”

In this case, the election petition was dismissed not on the threshold but after going through the whole trial. It was observed at paragraph 35 of the judgement as follows:

“35. All the averments made in paras 1 to 17 of the petition have been stated to be true to the personal knowledge of the petitioner and in the next breath the very same averments have been stated to be based on the information of the petitioner and believed by him to be true. The source of information is not disclosed. As observed by the Supreme Court in *F.A sapa v. Singora* the object of requiring verification of an election petition is to clearly fix the responsibility for the averments and allegations in the petition on the person signing the verification and, at the same time, discouraging wild and irresponsible allegations unsupported by facts. However, the defect of verification is not fatal to the petition, it can be cured (see *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* and *A.S. Subbaraj v. M.Muthiah*). in the present case the defect in verification was pointed out by raising a plea in that regard in the written statement. The objection was pressed and pursued by arguing the same before the Court. However, the petitioner persisted in pursuing the petition without proper verification which the petitioner should not have been permitted to do. In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in the required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.”

Therefore, this case is entirely different where trial was gone into and it was clearly found that the verification was not in proper form. Therefore, that evidence cannot be taken into consideration. The petitioner even did not rectify the defect. The Court found that the averments could not be looked into. Therefore, this case is distinguishable on the facts and as successive judgments which have been quoted above have consistently taken the view that such defects cannot be taken as a ground for dismissing the election petition and such defects are curable.

20. 15, However, in fairness whenever such defects are pointed then the proper course for the Court is not to dismiss the petition at the threshold. In order to maintain the sanctity of the election the Court should not take such a technical attitude and dismiss the election petition at the threshold. On the contrary after finding the defects, the Court should give proper opportunity to cure the defects and in case of failure to remove/cure the defects, it could result into dismissal on account of Order 6 Rule 17 or Order 7 Rule 11 CPC. Though technically it cannot be dismissed under Section 86 of the Act of 1951 but it can be rejected when the election petition is not properly constituted as required under the provisions of the CPC but in the present case

we regret to record that the defect which have been pointed out in this election petition was purely cosmetic and it does not go to the root of the matter and secondly even if the Court found them of serious nature then at least the court should have given an opportunity to the petitioner to rectify such defects.”

33. Having given a thoughtful consideration to the erudite submission of the learned Counsel and the authorities referred to above, I am of the opinion that at this stage it may not be proper to go into the question as to whether the business which the successful candidate was doing as a distributor of the liquefied petroleum gas can be said to fall within the mischief of Section 9-A over of the Act so as to hold that he is disqualified from contesting the election or for that matter that do not disentitle the petitioner/1st respondent to contest the elections. This is a matter which has to be adjudicated after a detailed inquiry in the Election Petition but it may not be proper to reject the Election Petition at the threshold on the ground that it does not disclose cause of action. As already observed, the specific allegation of the Election Petitioner is that the successful candidate suffers the disqualification in view of his admitted business of being a distributor in the liquefied petroleum gas under an agreement with the Bharat Petroleum Corporation Limited, which is admittedly a Government owned oil company. Whether such a trade or business amounts to having a contract with the State or Central Government is a matter to be adjudicated after full fledged trial or inquiry in the Election Petition. At the state of considering an application under Order VII Rule 11 C.P.C., and as held by the Apex Court, what is all that is required to be seen is as to whether a reading of the Election Petition in toto shows the existence of a cause of action for an Election Petitioner to challenge the election of a successful candidate or not. The facts which are essential to disclose the complete cause of action are required to be pleaded and a perusal of the Election Petition particularly paras 6 and 7 clearly show the existence of a cause of action, which read as under:

“6 I submit that the respondent No. 1 submitted Form-26 to the Returning Officer-cum-District Collector while submitting his nomination where under while giving the details of movable assets against the column ‘personal loans advance given to any person or entity including firm, company trust etc., and othe receivables from’, the respondent No. 1 categorically stated that “Advance with BPCL Rs.1,49,393/- and there by the respondent No.1 admitted his investment in the contract entered into by M/s. Roni Bharath Gas with the Central Government being the appropriate Government in the course of his business and therefore the respondent No.1 suffered the disqualification under section 9-A of the Representation of the People Act, 1951 consequently the election of the respondent No. 1 to the 15-Warangal (SC) Parliamentary Constituency is liable to be declared as void and consequently the petitioner shall be declared as duly elected.

7. I submit that the respondent No.1 made a false statement in the Form-26 where under at the column “details of profession or occupation” the respondent No. 1 categorically stated that the profession or occupation of his spouse as “House Wife” which is a false statement in as much as the spouse of the respondent No. 1 is an authorized signatory to the contract entered into between the Bharath Petroleum Corporation Limited and M/s. Roni Bharath Gas which is proprietary concern owned by the respondent No. 1.”

34. The truthfulness, the validity or the correctness thereof cannot be decided at the threshold. In my opinion, it may not be just and proper to adjudicate on this issue without affording an opportunity to either of the parties to substantiate or rebut the allegations as contained in the Election Petition.

35. The scope of the enquiry in the present application is limited to the extent to see as to whether the plain reading of the averments contained in the Election Petition in its entirety disclose the cause of action so as to proceed with the trial in the Election Petition in the instant case, the averments in the Election petition do disclose the cause of action and the issues raised are triable.

36. The other objection of the petitioner/1st respondent is that the election petition has not been properly filed in as much as there is no compliance of Section 83 (1) (c) of the Act which mandates that every petition shall be signed by the petitioner and the same is to be filed in the manner as laid down in the Civil Procedure Code for the verification of pleadings and it is mandatory that the 1st respondent/petitioner shall affirm and sign in the presence of notary. On the other hand, in the election. Petition filed by the 1st respondent/petitioner it is only stated that the petition is affirmed and it is not stated that the 1st respondent/petitioner affirmed in the presence of notary, and omission to state that the petition is signed in the presence of notary is an omission of vital nature and does not amount substantial compliance of the provisions of the Representation of Peoples Act.

37. There is no dispute in so far as the legal position is concerned. However, it is settled proposition that the defects which are pointed out are curable defects and on that score the election is not liable to be rejected under the provision of Order VII Rule-11 C.P.C. As a matter of fact, the 1st respondent/election petitioner has already filed applications in order to cure the defects pointed out by the petitioner herein. Therefore, there is no substance in the objection of the petitioner herein.

38. The cumulative effect of the above discussion is that there are no merits in the present application and the same is liable to be dismissed. Needless to say that any observations made herein are made only for adjudicating the application in hand without touching into the merits of the main Election Petition. It is also made clear that the question as to whether the petitioner herein suffered disqualification in view of the existing trade or business with Bharath Petroleum Corporation Limited, which disentitles him to contest the election or otherwise, is left open to be adjudicated in the main election petition.

39. In view of the foregoing reasons, this Application is dismissed.

S.V. RAMANA MURTHY,
Joint Registrar.

By Order,

S K RUDOLA,
Principal Secretary,
Election Commission of India.

BHANWAR LAL,
Chief Electoral Officer &
E.O. Spl. Chief Secretary to Government.

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